

Statement of
The Honorable Gordon R. England
Secretary of the Navy
Senior Executive for the National Security Personnel System

Before the
Committee on Armed Services
U. S. Senate

On
The National Security Personnel System

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Mr. Chairman and members of the committee. Thank you for the opportunity to appear before you to discuss the proposed design of the National Security Personnel System. Mr. Dan Blair, Acting Director of the Office of Personnel Management (OPM), our partner in developing NSPS, joins me today. We are pleased to appear before you to discuss the recently published proposed regulations for the National Security Personnel System, or NSPS. We wish to formally thank the entire Congress for granting DOD the authority to establish, in partnership with OPM, a new civilian human resources management system to support our critical national security mission. DOD and OPM take this task seriously and recognize the responsibility to balance our vital national security mission with protecting the interests of our most valuable resource, our people.

In November 2003, Congress granted the Department of Defense (DOD) the authority to establish a new human resources management system, appeals system, and labor relations system to replace a framework of rules and processes designed for a different time. The world has changed, jobs have changed, missions have changed – and our Human Resource (HR) systems need to change as well to support a new and unpredictable national security environment. Our civilians are being asked to assume new and different responsibilities, to be more innovative, agile and accountable than ever before. It is critical that DOD sustains its entire civilian workforce with modern processes and practices, particularly a human resources management system that supports and protects our employees' critical role in DOD's total force effectiveness.

NSPS gives DOD that opportunity – an opportunity to establish a more flexible civilian personnel management system and to make the Department a more competitive and progressive employer at a time when the country’s national security demands a highly responsive civilian workforce. The NSPS is a transformation lever to enhance the Department’s ability to execute its national security mission. It’s a key pillar in the Department’s transformation – a new way to manage its civilian workforce. NSPS is essential to the Department’s efforts to create an environment in which the total force functions and operates as one cohesive unit.

NSPS has unprecedented potential to greatly enhance the way DOD manages its civilian workforce, but it is also critical that we take care of our most valuable asset – our people. The proposed NSPS design follows a set of guiding principles that act as a compass to direct our efforts throughout all phases of NSPS development. “Mission First” and support of our national security goals and strategic objectives have been and remain paramount, but while also respecting the individual and protecting workers’ rights guaranteed by law, including the laws pertaining to veterans in the civil service. The new system emphasizes performance, and it values talent, leadership and commitment to public service. Accountability at all levels – our employees, supervisors and senior leadership - will be critical and all will be held accountable for their respective roles in a performance-based system. In keeping faith with our employees and the public we serve, NSPS is based on the principles of merit and fairness embodied in the statutory merit system principles, and it will comply with all other applicable provisions of the law.

The Collaborative Process

In addition to the opportunities that NSPS offers, it presents great challenges. Shortly after enactment of the NSPS statute, we contacted union leaders to solicit their input. In January and February 2004, joint meetings were held to exchange ideas and interests on a new labor relations system for DOD. During this time, many stakeholders, including members of this Committee, voiced concerns about our plans and process.

In response, the Department engaged in a broad, comprehensive review of our design and implementation strategy. In April 2004, senior DOD leadership approved a new collaborative process that the Department has since been using to design and implement NSPS. This process was designed by senior leaders and experts representing various elements within DOD, OPM, and the Office of Management and Budget. Using a bold, innovative approach, the senior leaders adopted the Defense Acquisition Management model as a way to establish the requirements for the design and implementation of NSPS. These senior leaders recommended Guiding Principles and Key Performance Parameters (KPPs), which defined the minimum requirements for NSPS. They also recommended establishing a Senior Executive and Program Executive Office (PEO), modeled after the Department's acquisition process. Shortly thereafter, an NSPS PEO was chartered as the central DOD program office to conduct the design, planning and development, deployment, assessment, and full implementation of NSPS. Mrs. Mary Lacey was appointed as the NSPS Program Executive Officer to provide direction to and oversight of the PEO office, a joint program office staffed with representatives from across the Department, including Component program managers

who are dual-hatted under their parent Component. At OPM, the Director designated Mr. George Nesterczuk, the Senior Advisor to the Director on Defense issues, to lead OPM activities in the joint development of the NSPS.

An integrated executive management team composed of senior DOD and OPM leaders provides overall policy and strategic guidance to the PEO and advises the NSPS Senior Executive. The PEO meets and consults with this team, the Overarching Integrated Product Team (OIPT), eight to ten times a month. Mr. Charles Abell, Principal Deputy Under Secretary of Defense for Personnel and Readiness, co-chairs this OIPT along with Mr. Nesterczuk of OPM. The Senior Executive meets with the PEO and OIPT at least twice a month to direct the process and to measure progress to plan.

Following the April 2004 decision to revise our design and implementation process, a series of additional meetings with the union leaders was initiated. Beginning in the spring of 2004 and continuing over the course of several months, the PEO sponsored a series of meetings with union leadership to discuss design elements of NSPS. Officials from DOD and OPM met throughout the summer and fall with union officials representing DOD civilians who are bargaining unit employees. These sessions provided the opportunity to discuss the design elements, options, and proposals under consideration for NSPS and solicit union feedback. A number of these meetings were facilitated by the Federal Mediation and Conciliation Service to ensure open and meaningful communication.

Since April 2004, DOD and OPM have conducted 10 meetings with officials of the unions that represent DOD employees, including the nine largest unions that currently have national consultation rights. These union officials represent over 1,500 separate bargaining units covering about 445,000 employees. These meetings involved as many as 80 union representatives from the national and local level at any one time, and addressed a variety of topics, including:

- (1) the reasons change is needed and the Department's interests;
- (2) the results of Department-wide focus group sessions held with a broad cross-section of DOD employees;
- (3) the proposed NSPS implementation schedule;
- (4) employee communications; and
- (5) proposed design options in the areas of labor relations and collective bargaining, adverse actions and appeals, and pay and performance management.

In keeping with DOD's commitment to provide employees and managers an opportunity to participate in the development of NSPS, the PEO sponsored a number of focus group sessions and town hall meetings at various sites across DOD. Focus group sessions began in mid-July 2004, and continued for approximately three weeks. A total of 106 focus groups were held throughout DOD, including at several overseas locations. There were over 1,000 participants, including employees, local union representatives, supervisors, managers, and human resources practitioners. Focus group participants were

asked what they thought worked well in the current human resources systems and what they thought should be changed. Over 10,000 comments, ideas and suggestions were received during the focus groups session. These inputs were summarized and provided to NSPS working groups for use in developing options for the labor relations, appeals, adverse actions, and human resources design elements of NSPS.

In addition, town hall meetings were held in DOD facilities around the world during the summer and fall of 2004. These meetings provided an opportunity to communicate with the workforce, provide the status of the design and development of NSPS, respond to questions, and listen to their thoughts and ideas. I conducted the first town hall meeting at the Pentagon on July 7, 2004.

In July 2004, the PEO established working groups to begin the NSPS design process. Over 120 employees representing the Military Departments and other DOD activities and OPM began the process of identifying and developing options and alternatives for consideration in the design of NSPS. The working group members included representatives from the DOD human resources community, DOD military and civilian line managers, representatives from OPM, the legal community, and subject matter experts in equal employment opportunity, information technology, and financial management.

The working groups were functionally aligned to cover the six program areas:

(1) compensation (classification and pay banding);

- (2) performance management;
- (3) hiring, assignment, pay setting, and workforce shaping;
- (4) employee engagement;
- (5) adverse actions and appeals; and
- (6) labor relations.

Each group was co-chaired by an OPM and DOD subject matter expert. Working groups were provided with available information and input from the focus groups and town hall sessions, union consultation meetings, data review and analysis from alternative personnel systems and laboratory and acquisition demonstration projects, the NSPS statute, the Guiding Principles and Key Performance Parameters. Additionally, subject matter experts briefed the working groups on a variety of topics, such as pay-for-performance systems, alternative personnel systems, pay pool management, and market sensitive compensation systems.

I personally addressed these individuals as they were about to embark on this process to ensure they understood the critical responsibility they were undertaking and the impact their work would have on the ability of the Department to more effectively accomplish its mission. Briefings and updates on progress and on the multitude of options developed were regularly received. You can be assured that these dedicated individuals took this task seriously and left no stone unturned as they reviewed and analyzed the multitude of ideas, options, and lessons learned that were all considered in this process.

In addition to reaching out to DOD employees and labor organizations, DOD and OPM met with other groups interested in the design of a new HR system for DOD. DOD and OPM invited selected stakeholders to participate in briefings held at OPM in August and September 2004. Stakeholder groups included the National Academy of Public Administration (NAPA), Coalition for Effective Change, Partnership for Public Service, veterans' service organizations, Federal Managers Association, and other non-union employee advocacy groups.

Before and after these stakeholder briefings, DOD and OPM responded to dozens of requests for special briefings. DOD and OPM also met with the Government Accountability Office, Office of Management and Budget, and Department of Homeland Security to keep them up to date on the team's activities.

DOD and OPM have worked hard to obtain the input of our employees and their representatives, managers and supervisors, and other stakeholders. A human resources system is being developed that has taken their concerns into consideration and that will create a work environment for our people to foster excellence and innovation and to reward our people accordingly. NSPS will provide our leaders and supervisors with flexibilities to better manage our people, while at the same time it will expand opportunities for our employees. It will mandate greater communication between managers and employees so that each and every employee will know what is expected and how their work supports the organization's mission.

The Proposed Regulations

The Secretary of Defense and the Director of OPM jointly issued the proposed regulations that were published in the Federal Register on February 14, 2005. This initiated a 30-day public comment period and provided another opportunity for input on the design of the system. The public comment period closed on March 16, 2005 and we are currently reviewing the thousands of comments we received from individual employees, interested citizens, professional organizations, employee unions, members of Congress, and advocacy groups. Many of the comments are thoughtful, genuine, and raise legitimate points for evaluation. We will give full consideration to these public comments as we move forward in finalizing the NSPS regulations.

The Federal Register Notice also served as the formal written proposal of the system for review and comment by our employee unions, as required by the NSPS statute. We encouraged them to participate in the public comment period as well. Comments were received from 12 national labor organizations representing DOD employees, including the United DOD Workers Coalition, which represents most of the DOD labor organizations. DOD and OPM have analyzed these recommendations, have given them serious consideration and we are about to begin discussions with the unions regarding their recommendations.

In recognition of the union's special status as our employee representatives, the NSPS statute provides for a "meet and confer" process with them for a minimum of 30

days. As required by the statute, we formally notified Congress on March 28, 2005 that we will begin the meet and confer process with employee representatives on April 18, 2005. We look forward to continuing our dialogue with our unions and, with the help of the Federal Mediation and Conciliation Service (FMCS), find common ground. Upon completion of the meet and confer process, the results and outcomes will be reported to Congress.

NSPS will not be implemented until after the meet and confer process, after the 30-day Congressional notification of the Department's intent to implement these systems, and after publishing the final regulations in the Federal Register.

Before describing the proposed design is, here is what will not change:

- *It does not remove whistle-blowing protections* – employees will have the same protections they have today.
- *It does not eliminate or alter access of DOD employees to the equal opportunity complaint process* – again, nothing in NSPS will change the current protections employees have today.
- *It does not remove prohibitions on nepotism or political favoritism* – both will remain prohibited personnel practices and will not change under NSPS.
- *It does not eliminate veteran's preference* – veterans will retain their special status under NSPS.

- *It does not end collective bargaining* – while there will be changes, collective bargaining will not end. Bargaining unit employees continue to have the right to organize and bargain collectively.
- *It does not give us a “blank check” to change the civil service system unilaterally* – there are many areas that are unaffected by NSPS – leave, benefits, training, travel allowances – the list goes on.
- *It will not result in a loss of jobs or opportunities for civil service employees* – To the contrary, NSPS will create incentives for managers to turn to civilians first, not last, when many vital tasks must be done. This will ease the burden on our valuable men and women in uniform to do only those tasks that are uniquely military.

What NSPS will do is put a modern, flexible personnel system in place that is also credible, transparent, and fair to our employees. DOD will be able to hire the right people in a more timely manner, and to pay and reward our employees properly, adequately recognizing their contribution to the mission. Managers will be held accountable for making the right decisions and for managing their employees – all of their employees. Specifically, NSPS will provide for:

- A simplified pay banding structure, allowing flexibility in assigning work and a move toward market sensitive pay
- A performance management system that requires supervisors to set clear expectations (linked to DOD’s strategic plan) and employees to be accountable

- Pay increases based on performance, rather than longevity
- Streamlined and more responsive hiring processes
- More efficient, faster procedures for addressing disciplinary and performance problems, while protecting employee due process rights
- A labor relations system that recognizes our national security mission and the need to act swiftly to execute that mission, while preserving collective bargaining rights of employees as provided for in the NSPS statute.

The proposals for performance management are designed to foster high levels of performance and to ensure that excellent performance is recognized, rewarded, and reinforced. NSPS is designed to make meaningful distinctions in levels of performance and to hold employees at all levels accountable. Employees will be under the performance management system for an adequate evaluation period before making any performance-based adjustments to their pay. No employee will have their pay reduced when they are converted into NSPS.

One of the most important changes the proposed system offers is a stronger correlation between performance and pay plus greater consideration of local market conditions in setting pay rates. Our proposal would eliminate the General Schedule pay system in favor of a new performance-based, market-sensitive pay system that includes three major features. First, NSPS emphasizes performance over tenure. Open pay ranges eliminate the “step increases” in the current system, which are tied to longevity. Second, pay will be adjusted by occupation or career group in each market, rather than a one-size-

fits-all approach currently in practice. Third, performance pay pools will be established to ensure that employees will receive increases based on their performance.

Our proposed appeals system focuses on simplifying a complex, legalistic and often sluggish process that often disrupts operations. At the same time, the proposed system will ensure that employees receive fair treatment and that they are afforded the full protections of due process.

The proposed regulations were developed in consultation with staff of the Merit Systems Protection Board, with extensive discussions over appellate options and alternatives. MSPB officials were particularly constructive and many of their suggestions are reflected in our proposed appellate procedures, including the retention of MSPB administrative judges (AJs) as the initial adjudicators of employee appeals of adverse actions. Although the NSPS law allowed DOD to establish an internal appeals process, we concluded that the potential advantages of creating a new infrastructure – greater efficiency of decision-making and deference to agency mission and operations, among them – could be achieved if MSPB administrative judges were retained but with procedural modifications. The modifications we propose will streamline the process without sacrificing employee protections.

Among those changes is a proposal to allow the Department to review initial decisions of the Administrative Judges to ensure that MSPB interprets NSPS and these regulations in a way that recognizes the critical mission of the Department and to ensure

that MSPB gives proper deference to such interpretation. After review, the Department may affirm the decision, remand the case to the AJ for further adjudication, modify or reverse the decision, but only based on stringent criteria. In all adverse action cases, final Department decisions may be appealed to the MSPB, which retains limited review authority established in the NSPS statute. Ultimately, an employee or the Secretary may seek judicial review if still not satisfied with the appeal decision.

To balance some of the proposed changes, the Department will establish a single burden of proof standard. Currently, the evidentiary standards for performance and conduct actions differ, with performance-based actions requiring a lower standard of proof. That will no longer be the case – the Department’s adverse action decision will be subject to a single standard – the preponderance of the evidence – for all adverse actions, whether based on conduct or performance. To address concerns that the current system fails to adequately consider DOD’s critical national security mission, the proposed regulations also make it more difficult for administrative judges to substitute their judgment in mitigating penalties; however, the Department will ensure that managers consider a variety of important factors in each situation before determining an appropriate penalty.

The development process has been cognizant of the need to provide protections guaranteed by law to our employees. We were also mindful of a basic tenet of the civil service – preserving merit system principles – treating employees fairly and equitably and protecting them from arbitrary actions, coercion for partisan political purposes and

personal favoritism, and protecting them against reprisal. The proposed appeals system will continue to provide our employees with these all-important protections.

The proposed labor relations construct balances our operational needs while providing for collective bargaining and consultation with employee representatives. In the face of a committed and unpredictable enemy, DOD needs to have authority to move quickly to prepare for and confront threats to national security. As such, the Department will not bargain over the exercise of rights impacting operations and mission accomplishment. NSPS will provide for consultation with employee representatives both before and after implementation when circumstances permit. Bargaining obligations will be retained concerning the exercise of the remaining management rights, such as certain personnel procedures. Although we are proposing to limit situations in which bargaining takes place, there will continue to be meaningful local bargaining over important matters. Because the new labor relations system is a critical, enabling component of NSPS, DOD plans to make the new labor relations provisions effective across the entire Department after the issuance of final regulations, and after notification to Congress as required by law.

The Department also proposes to create a National Security Labor Relations Board (NSLRB) to hear and resolve labor disputes. The NSLRB would be composed of at least three members appointed to fixed terms. In evaluating the merits of a separate NSLRB that would largely replace the Federal Labor Relations Authority, with its Government-wide responsibilities, DOD and OPM put a high premium on the

opportunity to establish an independent body whose members would have a deep understanding of and appreciation for the unique challenges the Department faces in carrying out its national security mission. The NSLRB will issue binding decisions on unfair labor practice (ULP) cases, to include scope of bargaining, duty to bargain in good faith, and information requests; certain arbitration exceptions; negotiation impasses; and questions regarding national consultation rights. FLRA will continue to determine appropriate bargaining units and supervise and conduct union elections as well as review NSLRB decisions using appellate standards. FLRA decisions will be reviewable by various Federal Circuit Courts of Appeals as occurs today.

Implementation – a Phased Approach

Transformation is a process. The spiral concept will implement NSPS in successive waves – initially deploying the new personnel system to a number of well-chosen organizations for effective management of implementation, and to troubleshoot, evaluate, and report on the results in a timely manner. As with any new system, especially one with the size and complexity of NSPS, refinements will likely be necessary as the rest of the workforce is incorporated.

Although DOD will implement the labor relations system DOD-wide, the human resources system will be phased in, starting perhaps as early as July 2005. In the first spiral, up to 300,000 General Schedule (GS and GM), Acquisition Demonstration Project, and certain alternative personnel system employees will be brought into the

system through incremental deployments over 18 months, with the first increment covering 60,000 employees. After an assessment cycle and the certification of the performance management system required by the NSPS statute are completed, the second spiral will be deployed. Spiral two, consisting of Federal Wage System employees, overseas employees, and all other eligible employees, will be phased in over a three-year period, with full implementation achieved by 2007/2008.

Training is one of the most critical elements for a smooth and successful transition to NSPS. The Department is fully committed to a comprehensive training program for our managers, supervisors and employees. All employees will be trained to understand the system, how it works, and how it will affect them. The Department has a robust training infrastructure already in place to train and educate its personnel and we will leverage that infrastructure as we implement NSPS specific training. We have a dual training strategy to provide functional training on all elements of the NSPS system, as well as behavioral training, with the focus on the skills, attitudes and behaviors necessary to successfully adapt to NSPS. Some of the Component behavior-based training has already begun. Other courses are in development and will be available to train all affected employees in advance of NSPS implementation.

Summary

NSPS involves significant changes. While change is always difficult, it is necessary for the Department to carry out its mission and to create a 21st century system

that is flexible and contemporary, will help attract skilled, talented and motivated people, and will also help us to retain and improve the skills of the existing workforce. NSPS will make it possible to hire critical skills more quickly so that DOD is better equipped to meet challenges such as those in the days immediately following September 11th. NSPS will facilitate our ability to quickly deploy new technology to ensure that our military and civilians have the best equipment without delay. NSPS will eliminate limitations on managers that often result in the use of military and contract personnel to do jobs that could have and should have been performed by civilians, freeing up uniformed personnel to focus on matters unique to the military.

NSPS will provide our civilian employees with greater opportunities for career growth within the Department. Limitations imposed by classification standards will no longer preclude employees from expanding their scope of work so they will be able to broaden their career paths. NSPS will promote a performance-based culture and employees will be rewarded for individual performance and contribution to mission as well as teamwork. Managers will be able to offer competitive salaries to new and existing personnel so that we can attract and retain the best and brightest in our workforce.

DOD has over 20 years of successful experience with testing similar personnel flexibilities, namely in our personnel demonstration projects, at our laboratories and with our acquisition workforce – it is now time to expand those flexibilities to the rest of the Department. NSPS will modernize a 50-year old, outdated civil service system, and

allow us to attract, recruit, retain, compensate, reward, and manage our employees, with a focus on performance, flexibility, and accountability.

NSPS proposals have been developed with extensive input from our employees and their representatives. We look forward to reviewing and analyzing the comments on the proposed regulations and to the meet and confer process with our employee labor representatives. DOD is committed to the collaborative approach taken in the development of NSPS and will continue to encourage a dialogue as we proceed through the writing and development of the implementing issuances.

Thank you for the opportunity to address this important Committee and to briefly describe the proposed National Security Personnel System.